From: Jason W. Solinsky
To: Microsoft ATR
Date: 1/28/02 4:54am
Subject: Microsoft Settlement

My name is Jason W. Solinsky. I am a software entrepreneur and have served as the Chief Technology Officer of four different enterprises.

I am writing in opposition to the proposed settlement of the Microsoft anti-trust case.

My opposition is for the following reasons:

1. The proposed settlement is almost entirely focused on measures to prevent abuses by Microsoft in the future, and does not address past behavior in any substantive way. Nor does it provide any incentive for Microsoft not to repeat its past actions.

Microsoft was found to have violated the Sherman anti-trust act in numerous ways to preserve its monopoly on consumer operating systems, the single most valuable monopoly on the planet, conservatively valued at $150-200 billion dollars. As a software entrepreneur, I can tell you that every startup is asked "The Microsoft Question" by potential investors. "How will your venture fair if Microsoft decides to aggressively target your space?". A fear that Microsoft will do to new companies what it did to Netscape has caused at least six companies that I am personally aware of not to be started. This suggests that nationwide THOUSANDS of new enterprises and sources of innovation and competition for Microsoft have been destroyed by Microsoft's behavior.

Despite this, the proposed settlement is almost entirely focused on preventative measures. If, in 1995, Microsoft was offered the choice of ceasing all illegal activities or entering into this settlement in 2002, Microsoft would, without question, have chosen this settlement. Protecting a $200 Billion dollar asset, even slightly, is worth suffering the negligible restrictions placed on Microsoft by this settlement a thousand times over. By offering a settlement which results in a business outcome that is superior to not violating the law in the first place, you send a clear message to future executives that they can ignore our nation's anti-trust laws with beneficial results.

2. The proposed remedies will not prove effective in preventing future abuses by Microsoft. The findings of fact, made much of the fact that the software industry is a rapidly changing business. The department of justice seems to have completely forgotten about this in drafting the settlement. Nearly every provision has had loopholes placed in it that dramatically weaken its effectiveness.

As an expert in computer security, I would like to focus in particular on the provision that exempts Microsoft from disclosing the details of its security APIs if Microsoft feels that such a disclosure would compromise the security of its products. I note the following:

A: The single most important step in ensuring the security of a product is public disclosure of its security mechanisms. This allows other experts to review its safety, and it permits potential users to make informed decisions about the risks inherent in the product. Especially in the wake of September 11, allowing an exemption which encourages less secure products is unthinkable, yet that is precisely what the department of justice proposes to do.

B: Microsoft has historically used security protocols as a method of preventing compatibility with third

party products. Witness what Microsoft did with Kerberos. It doesn't matter how open Microsoft's APIs are if they are permitted to design incompatibilities into their security protocols that prevent effective interoperation.

Given this is surprising and unfortunate that the Department of Justice has agreed to this provision. If no other change is mode to this settlement, which on the whole I believe is entirely in adequate for the circumstances, I strongly encourage the DOJ to tighten this provision by providing that a SINGLE COMPUTER SECURITY EXPERT UNAFILLIATED WITH MICROSOFT be given the ability to review all materials that Microsoft wishes to keep secret under this provision and UNILATERALLY reverse Microsoft's decision. Anything less will not only result in less secure products, but will give Microsoft a government-endorsed anti-competitive tool so powerful, that the remainder of the settlement is of little significance.

In conclusion, I think that this entire settlement is inadequate for the circumstances, and encourage the DOJ to pay particular attention to the security exclusion, which reflects a lack of knowledge of computer security by its drafters.

JWS

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